THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 24.10.2007

IA 8979/2006 in CS(OS) 1643/2005

M/S MOUNTAIN MIST AGRO INDIA (PVT) LTD & ANR. .....Plaintiffs

- versus -

MR S. SUBRAMANIYAM .....Defendant

Advocates who appeared in this case:

For the Plaintiffs : Mr Sudhir K. Makkar
For the Defendant : Mr C. A. Sundaram, Sr. Advocate with Mr Sandeep Mahapatra with Ms Rohini

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J

1. This is an application for leave to defend. The suit has been filed by the plaintiffs under Order 37 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') for recovery of a sum of Rs 1,25,55,000/- along with pendente lite and future interest. The suit is founded upon a cheque bearing No. 262653 dated 11.09.2002 issued by the defendant in favour of the plaintiff No.1 for a sum of Rs 93 lacs. The

cheque was drawn on Oriental Bank of Commerce, Ootacamund, Tamil Nadu. The said cheque has been dishonoured with the remarks of the drawee bank— "payment stopped by drawer".

2. The first issue raised by the defendant in this leave to defend application is that this Court does not have territorial jurisdiction to entertain the suit. In paragraph 18 of the plaint, it is stated that the cause of action in the present suit partly arose at New Delhi as the cheque issued by the defendant was presented for clearance by plaintiff No.1 through its bankers at New Delhi and the same was returned dishonoured at New Delhi. It was also stated that the plaintiff No.1 has its administrative office at New Delhi and accordingly, maintains a bank account at New Delhi through which the said cheque was presented for clearance. On the basis of these statements, it is submitted, on behalf of the plaintiffs, that this Court has jurisdiction to try and entertain the present suit. On the other hand, it is contended on behalf of the defendant that the plaintiff as well as the defendant reside at Ootacamund. The contract between the parties, that is, between the plaintiff No.1 and the defendant was signed at Ootacamund. The contract relates to properties at Ootacamund. The cheque in question

was drawn on Oriental Bank of Commerce, Ootacamund and the cheque had been handed over by the defendant to the plaintiffs at Ootacamund. Therefore, the entire cause of action has arisen at Ootacamund and nothing has happened in Delhi. It was also pointed out by the learned counsel for the defendant that the plaintiff No.1 is a private limited company having its registered office at Coonoor, Nilgiris (not in New Delhi). The plaintiff No.2, who is one of the Directors of the plaintiff company, also resides at Ootacamund and his address has mischievously been given as New Delhi. It was contended that an examination of the cause title and the memo of parties would indicate that the plaintiff No.2's address of New Delhi is a "care of address". In point of fact, in the course of arguments, it was revealed that the Delhi's address of the plaintiff No.2 is that of the plaintiff No.2's father. In any event, for the purposes of question of territorial jurisdiction, the place of residence of the plaintiffs is irrelevant. Question that arises for consideration in the present case is:-

> Whether presentation of a cheque *ipso facto* confers jurisdiction on the courts at the place where such presentment for collection is done?

3. The admitted facts are that the cheque in question was handed over by the defendant to the plaintiffs at Ootacamund. The cheque was accepted unconditionally by the plaintiffs at Ootacamund. The cheque was drawn on the defendant's bank— Oriental Bank of Commerce — at Ootacamund, Tamil Nadu. The plaintiffs carried the cheque to Delhi and deposited the same in the plaintiff no.1's bank— ICICI Bank, Green Park Branch, H-2, Green Park Extension, New Delhi— for collection. The ICICI Bank did not have a branch at Ootacamund and, therefore, requested the Indian Bank at Chennai to arrange for the collection. The Indian Bank, in turn, forwarded the cheque to the Oriental Bank of Commerce, Ootacamund for payment. However, the Oriental Bank of Commerce returned the cheque to the said Indian Bank unpaid for the reason— "payment stopped by the drawer". The Indian Bank forwarded the returned cheque to ICICI Bank, New Delhi, having been unable to obtain payment for the reason indicated above. ICICI Bank, Green Park Branch, New Delhi then notified the plaintiff No.1 that its outstation cheque No. 262653 for Rs 93,00,000/- had been dishonoured by Oriental Bank of Commerce and that the cheque had been returned for the reason "payment stopped by the drawer".

4. The plaintiffs submit that the fact that the cheque was deposited in its bank (ICICI Bank) in New Delhi and that the said bank ultimately informed the plaintiff of the dishonour of the cheque, meant that a part of the cause of action arose in New Delhi and, therefore, this Court would have territorial jurisdiction over the subject matter of the present suit.

5. The learned counsel for the plaintiffs placed reliance on the following decisions:-

(i) ***I. T. Commr. v. M/s. Ogale glass Works Ltd :AIR 1954 SC 429;***

(ii) ***Gouri Shankar v. Ram Banka :AIR 1963 Patna 398;***

(iii) ***K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr: JT 1999 (7) SC 558;***

(iv) ***M. Vittal Rao v. M. H. Ranganath: 2000 AIHC 1973 (Karnataka High Court);***

(v) ***A. B. C. Laminart Pvt. Ltd. v. A. P. Agencies Salem: 1989 (2) SCC 341; and***

(vi) ***Navinchandra N. Majithia v. State of Maharashtra: AIR 2000 SC 2966.***

6. On the other hand, the learned counsel for the defendant placed reliance on:-

(i) ***Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd:(2001) 3 SCC 609;***

(ii) ***Escorts Limited v. G. K. Automobile: 127(2006) DLT 559; and***

(iii) ***Gujrat Insecticides Ltd. v. Jainsons Minerals: 140 (2007) DLT 465.***

7. In ***Ogale Glass Works*** *(supra),* a decision on which the learned counsel for the plaintiffs had placed great reliance, the question of liability to income tax in respect of payments made through cheques arose for consideration. The assessee (Ogale Glass Works Ltd.) was incorporated and carried on business in the erstwhile princely State of Aundh, which was outside British India. The Income Tax Act, 1922 operated throughout British India but not in princely India. The question arose as to where the income was received by Ogale Glass Works Ltd. The said company was supplying goods manufactured by it to the Government of India. Under contractual terms between the said company and the Government of India, payments for the delivery of goods were to be made on submission of bills by cheques on a branch of the Reserve Bank of India or Imperial Bank of India transacting

government business. It is of significance to note that the assessee (Ogale Glass Works Ltd.) submitted bills in the prescribed form and on the form itself it used to instruct the Government of India to "Kindly remit the amount by a cheque in our favour on any bank in Bombay". All payments for the goods supplied were made by cheques drawn by the government department at Delhi on the Reserve Bank of India, Bombay branch. The cheques were received by such company at its office in Aundh State by post and were honoured in due course by the Reserve Bank at Bombay. The question arose as to where the payment was received. Was it received at Delhi, where the cheques were issued and posted? Was it received at Aundh where the cheques were received by the company? Or was it received at Bombay, where the cheques were made payable and honoured in due course? In this context, the Supreme Court observed that when it is said that the payment by a negotiable instrument is a conditional payment, what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand. The Supreme Court quoted with approval, Benjamin on Sale, 8th Edition, page 788 to the following effect:-

"The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition, i.e., non-payment at maturity."

The Supreme Court also observed that in Byles on Bills, 20th Edition, page 23, the position is summarised pithily as under:-

"A cheque, unless dishonoured, is payment."

In the said decision, since none of the cheques in question had been dishonoured, it was construed by the Court that the payment took effect at the time of delivery. The Supreme Court ultimately held that the posting of the cheques at Delhi, in law, amounted to payment in Delhi and, therefore, the income, profits and gains in respect of the sales made to the Government of India was received in Delhi, which was part of British India and was, therefore, taxable. The Supreme Court did not examine the question of dishonour of cheques. There is nothing in this decision of the Supreme Court which in any way advances the case of the plaintiffs. The said decision pertains to a situation where the cheques had been honoured and it was concluded that in such cases, the question of payment by cheques sent by post would depend upon the agreement between the parties and the course of conduct of the parties. In ***Ogale Glass Works*** *(supra)*, the Supreme Court observed that:-

"There can be no doubt that as between the sender and the addressee it is the request of the addressee

> that the cheque be sent by post that makes the post-office the agent of the addressee".

So, as Ogale Glass Works Ltd. had expressly requested the Government of India to remit the amounts of the bills by cheque, the Supreme Court observed that this clearly amounted, in effect, to an express request by the said company to send the cheques by post and, therefore, the posting of the cheques in Delhi, in law, amounted to payment in Delhi. The situation in the present case is different and much the worse for the plaintiffs. Here the cheque was not required to be posted but was accepted by the plaintiffs from the defendant at Ootacamund without the agency of the postal department. And, the cheque was accepted by the plaintiffs unconditionally.

8. The next decision relied upon by the learned counsel for the plaintiffs was that of a learned Single Judge of the Patna High court in the case of ***Gouri Shankar*** *(supra)* wherein it was observed:-

> "Thus, the cause of action in respect of payment by cheque would arise partly at the place where the cheque is issued or delivered and partly at the place where the cheque is honoured or dishonoured by the bank."

Relying on the above observation, the learned counsel for the plaintiffs submitted that since the cheque was issued and delivered at Ootacamund, part of the cause of action would definitely arise at

Ootacamund. However, since the cheque was dishonoured in New Delhi, part of the cause of action also arose in New Delhi. Unfortunately, I am unable to subscribe to this view. In any event, the said decision in ***Gouri Shankar*** *(supra)* does not lead to such a conclusion. This would be clear if the facts involved in ***Gouri Shankar*** *(supra)* were to be noted. In that case all the cheques were drawn at Giridih (Bihar) by the respondent on a Bombay Bank and they were cashed by the appellant through the Giridih branch of United Commercial Bank who got the cheques cashed from the Bombay Bank. A suit had been filed in respect of the cheques at the Bombay Civil Court. One of the issues which arose before the Patna High court was whether the Court at Bombay had any jurisdiction in the matter and as to whether the decree passed by the Bombay Court was without jurisdiction. It was observed that insofar as the cash payments were concerned, the cause of action wholly arose at Giridih. But, the three cheques which were in question, though issued at Giridih, were drawn on a Bombay Bank. After placing reliance on the Supreme Court decision in the case of ***Ogale Glass Works*** *(supra),* the learned Judge observed that a payment by a negotiable instrument is a conditional payment in the sense that such payment is subject to a condition subsequent that if the

negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand. The payment takes effect from the delivery of the instrument, but it is defeated by happening of the condition, that is, non-payment on maturity. It was further observed that a cheque, unless dishonoured, is payment, subject to the condition that it should be duly honoured at the proper date, in other words, the cheque should operate as payment unless defeated by dishonour. The Court ultimately observed that:-

> "In the instance case, therefore, the cause of action arose partly at Giridih where the cheques were delivered and partly at Bombay where the cheques were honoured by the Bank ; and it must be held that the Bombay Court had jurisdiction to entertain the suit."

Although the above observation, on a first look, appears to support the contentions of the plaintiffs in the present case, that is not the position. The Patna High Court had observed that the cause of action would arise partly where the cheque is issued and partly where it is honoured or dishonoured. The question that would arise is where is a cheque said to be honoured or dishonoured? Does it refer to the place of the drawee bank or does it refer to the place of the collecting bank? As noted above, all the cheques, in ***Gouri Shankar*** *(supra),* were drawn at Giridih on a Bombay Bank. They were deposited for collection at the Giridih branch of United Commercial Bank which, in turn, got the cheques encashed

from the Bombay Bank. In this background, the Patna High Court only considered the question of as to where the cheques were honoured. It found that the cheques were honoured at Bombay and, therefore, the Court at Bombay also had jurisdiction. The Patna High court was not required to consider the question as to whether the location of the collecting bank at Giridih would also confer jurisdiction on the courts at Giridih merely because the cheques were deposited at such bank at Giridih. This decision, therefore, also, does not advance the case of the plaintiffs.

9. The learned counsel for the plaintiffs placed strong reliance on the decision of the Supreme Court in the case of ***K. Bhaskaran*** *(supra)*. The following paragraphs were referred to with particular emphasis:-

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence : (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

> 15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:
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> > "Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."
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> 16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

However, the learned counsel for the defendant submitted straightaway, and in my opinion, rightly so, that the decision would be limited to the question of dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881 read with the Code of Criminal Procedure, 1973. The entire emphasis of cause of action in a civil suit is different from the question of jurisdiction of a criminal court in respect of an offence. The Supreme Court in ***K. Bhaskaran*** *(supra)* considered the offence under

Section 138 of the Negotiable Instruments Act, 1881 and regarded it to be a concatenation of a number of acts such as drawing of the cheque, presentation of the cheque to the bank, returning the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and failure of the drawer to make payment within 15 days of the receipt of the notice. Referring to these five components of the offence under Section 138 and to the provisions of Section 178 (d) of the Code of Criminal Procedure, 1973 which by itself provides that where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas, the Supreme Court concluded that the five different acts if done in five different localities would clothe any of the courts exercising jurisdiction in any one of the five local areas with jurisdiction to try the offence under Section 138 of the Act. It is apparent that these observations relate to and are limited to the offence of dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881. It does not have any bearing on what constitutes a cause of action in respect of a dishonoured cheque in a summary suit, which has to be considered under the provisions of the CPC read with the law of contracts and civil actions in respect of negotiable

instruments.

10. The learned counsel for the plaintiffs placed particular stress on the fact that presentation of the cheque to "the bank" was a vital component of the offence under Section 138. He contended that in the present case the cheque was presented to ICICI Bank at New Delhi and, therefore, the plaintiff could choose and, indeed, file the suit in the Court at Delhi in view of the fact that presentation of the cheque to the bank constituted a component of the offence under Section 138. There are two answers to this submission. The first has already been indicated above and, that is, that the case before me is not one of an offence under Section 138 of the Negotiable Instruments Act, 1881 but is a civil action brought to this Court by way of a summary suit. The other answer is one which was relied upon by the learned counsel for the defendant by referring to the decision of the Supreme Court in the case of ***Shri Ishar Alloy Steels Ltd*** *(supra)*. In that case one of the main issues was what is meant by "the bank" as mentioned in Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881. Did such bank mean the bank of the drawer of the cheque or did it cover within its ambit any bank including the collecting bank of the payee of the cheque. To which

bank is the cheque to be presented for the purposes of attracting the penal provisions of Section 138 of the Negotiable Instruments Act, 1881? In ***Shri Ishar Alloy Steels Ltd*** *(supra)*, the Supreme Court held that "the bank" referred to in Clause (a) of the proviso to said Section 138 had reference to the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee in whose favour the cheque is issued. The learned counsel for the plaintiffs had raised an objection with regard to placing reliance on the Supreme Court decision in the case of ***Shri Ishar Alloy Steels Ltd*** *(supra)* on the ground that it only related to the question of limitation. While it is true that the issue was with regard to presentment of the cheque within the stipulated period of six months, the specific questions, as noted above, were raised before the Supreme Court and were specifically answered by it in the following manner:-

> "9. The use of the words "a bank" and "the bank" in the Section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is pre-fixed by the definite article "the". The same Section permits a person to issue a

cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

10. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who

> shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee."

Consequently, even if the plaintiffs submission based upon ***K. Bhaskaran*** *(supra)* that presentment of the cheque to "the bank" constituted a vital component, was to be accepted for the purpose of the present civil action, it is clear that the expression "the bank" has reference only to the drawee bank. The drawee bank in the present case is the Oriental Bank of Commerce at Ootacamund, Tamil Nadu. Therefore, presentation of the cheque to the Oriental Bank of Commerce, Ootacamund, Tamil Nadu constitutes the component which the plaintiffs is referring to. Consequently, this Court would not have territorial jurisdiction in respect of such presentation of the cheque even if it is assumed that the decision in ***K. Bhaskaran*** *(supra)* was to apply to civil actions.

11. Reliance was also placed by the learned counsel for the plaintiffs on the Karnataka High Court decision in the case of ***M. Vittal Rao*** *(supra).* That was a case which involved a promissory note. The said promissory note was executed in Davangere city where the defendants were also residing. However, a demand notice was got issued to the defendants from Bangalore through the plaintiff's advocate. The plaintiff contended that since the demand notice was issued to the defendant from Bangalore, part of the cause of action had also arisen at Bangalore and was not limited to Davangere city where the promissory note was executed. On behalf of the defendant it was contended that the Court at Bangalore had no jurisdiction to entertain and try the suit inasmuch as the promissory note has been executed at Davangere city and the defendants also resided there. The Karnataka High court, in ***M. Vittal Rao*** *(supra)* concluded that since the original demand notice was issued to the defendant from Bangalore by the plaintiff through his advocate, part of the cause of action also arose at Bangalore. The learned counsel for the plaintiffs placed reliance on this conclusion of the Karnataka High Court to submit that since the cheque was deposited with ICICI Bank at Delhi for collection, it amounted to a demand for payment under the cheque and, therefore, part of the cause of action also arose in

New Delhi. I am unable to agree with this submission of the learned counsel for the plaintiffs. Such a conclusion, as is sought to be arrived at by him, cannot be discerned from the decision in ***M. Vittal Rao*** *(supra)*. The facts of that case clearly indicate that the promissory note incorporated a specific clause with a stipulation that the demand for repayment of debt under the said note could be made by the plaintiff at any time and at any place and that the defendants were agreeable to meet the demand at whichever place it was made by the plaintiff. It is in the background of this specific stipulation that the Karnataka High Court concluded as under:-

> "11. Therefore, in the case on hand also the demand for payment having been made by the plaintiff in Bangalore through Ex. P 3 demand notice in exercise of the right reserved for him under Ex. P1 pro-note the cause of action for the suit based thereon had arisen in part in Bangalore and within the jurisdiction of the Court below in the light of sub-section (c) of Section 20 of the CPC"

But, the factual position in the present case is entirely different. First of all, this is a case of a cheque and not a promissory note. Secondly, there is no such stipulation and thirdly, the cheque is, in any event, honoured or dishonoured only upon presentment at the drawee bank.

12. The learned counsel for the plaintiffs had also referred to the Supreme Court decision in the case of ***A. B. C. Laminart Pvt. Ltd.*** *(supra)* to point out as to what constitutes cause of action. He also referred to paragraph 12, which reads as under:-

> "12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

He also referred to the following portion of paragraph 15:-

> "Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors."

There can be no dispute with the general proposition as to what constitutes cause of action. It must be remembered that the present case is based entirely upon the dishonour of a cheque. As indicated in ***A. B. C. Laminart Pvt. Ltd.*** *(supra),* part of cause of action arises where money is expressly or impliedly payable under a contract. In the case of a cheque, the money is payable at the drawee bank. The drawee bank in this case is the Oriental Bank of Commerce at Ootacamund and, therefore, the cause of action with regard to non-payment or dishonour of the cheque would arise only at Ootacamund and not at Delhi.

13. Lastly, the learned counsel for the plaintiffs had placed reliance on the decision of the Supreme Court in the case of ***Navinchandra N. Majithia*** *(supra)* which also has reference to what constitutes cause of action. As already indicated above, there can be no exception to the general principles enunciated by the Supreme Court with regard to what constitutes cause of action. The difficulty arises in considering particular cases. Cause of action refers to every fact, which, it would be necessary for the plaintiff to prove, if traversed, in order to support its right to a judgment of the Court. The essential and key fact which had to be proved by the plaintiffs in the present case is that the

drawee bank refused to honour the cheque drawn on it by the defendant. The fact, therefore, pertains to the dishonour of the cheque by the drawee bank. The drawee bank is the Oriental Bank of Commerce at Ootacamund and its refusal to honour the cheque on the ground that the payment had been stopped by the drawer is the cause of action for filing the present suit. That cause of action has arisen entirely at Ootacamund. The depositing of the cheque at ICICI Bank, New Delhi, its transmission to Indian Bank, Chennai and its return in the same route but in the reverse order does not constitute part of the cause of action. The cause of action is and remains to be the refusal by the Oriental Bank of Commerce at Ootacamund to honour the cheque because the drawer had stopped payment. Therefore, applying the general principles with regard to cause of action, as enunciated in ***A. B. C. Laminart Pvt. Ltd.*** *(supra)* and ***Navinchandra N. Majithia*** *(supra)* to the facts of the present case, it is apparent that no part of the cause of action arose in Delhi.

14. Two more decisions need to be referred to as they were placed by the learned counsel for the defendant. The first decision is that of ***Escorts Limited*** *(supra)* wherein it was observed in paragraph 28 that non-payment is essentially non-performance. It was further observed

that the only thing that has to be seen is where the payments were normally required to be made. That would be the place of performance. The place of performance as well as the place of non-performance is the same. In the light of these observations, it is clear that the cheque was to be honoured at Ootacamund. There is no doubt that the cheque was accepted by the plaintiffs at Ootacamund. There is also no doubt that in the light of the law discussed above, the payment would have been complete, had the cheque been honoured, at the place of acceptance and, that is, at Ootacamund. However, since the cheque was dishonoured, the place of non-payment or non-performance would have to be identified. That place would be the place where the payments were normally required to be made. In this case the payment was required to be made at Ootacamund as it was to be honoured by the bank at Ootacamund. Moreover, in ***Gujrat Insecticides Ltd.*** *(supra)*, a learned Single Judge of this Court observed:-

> "Merely because cheques given to the plaintiff are deposited by the plaintiff in Delhi would not be of an indicator that part of action has arisen in Delhi."

15. Section 64(1) of the Negotiable Instruments Act, 1881, insofar as it relates to cheques, stipulates that the cheques must be presented for payment to the drawee by or on behalf of the holder and

that in default of such presentment, the other parties thereto are not liable thereon to such holder. This provision specifically indicates that unless there is proper presentment of the cheque, the drawer cannot be held liable in respect of the same. Proper presentment of the cheque requires that the same must be presented for payment to the drawee. In this case the drawee is the Oriental Bank of Commerce at Ootacamund. Therefore, in the facts of the present case, the presentment for payment of the amount represented by the cheque had to be made to the drawee, i.e, the Oriental Bank of Commerce at Ootacamund. The deposit of the cheque by the plaintiffs at their bankers (ICICI Bank, New Delhi) for collection is of no consequence. What is of importance is only the fact of presentment for payment and that has to be to the drawee which is the Oriental Bank of Commerce at Ootacamund.

16. In these circumstances, I find that the defendant's objection with regard to territorial jurisdiction deserves to be upheld. Consequently, this application is allowed to the extent that this Court does not have territorial jurisdiction to entertain the present suit. The consequence of which would be that the suit itself stands dismissed for want of territorial jurisdiction. It is made clear that this Court has not

expressed any opinion on the merits of the matter. This application as well as the suit and other pending applications stand disposed of.

BADAR DURREZ AHMED
(JUDGE)

October 24, 2007
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